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this Memorandum Decision shall not be  
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**IN THE  
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 67A05-0609-CR-481
	)	
WALTER E. CANTRELL, JR.,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE PUTNAM CIRCUIT COURT  
The Matthew L. Headley, Judge  
Cause No. 67C01-0511-FC-153

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**January 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Walter Cantrell was charged with Class C felony possession of cocaine. Cantrell filed a motion to suppress evidence seized by police after a routine traffic stop. The trial court granted the motion, and the State appeals the trial court's decision. Concluding that the traffic stop was not unreasonably prolonged by a dog sniff search of the car, we reverse.

### Facts and Procedural History

Putnam County Sheriff's Department Deputy Dwight Simmons, on duty with his canine partner, Deuce, pulled Cantrell over after determining that the license plate on the Cadillac Escalade Cantrell was driving was actually registered to a different car. Deputy Simmons asked to see Cantrell's license and registration. Cantrell handed Deputy Simmons a passport instead, explaining that he had a pending charge for operating a vehicle while intoxicated and had lost the pink slip he was given when he relinquished his license. Deputy Simmons testified at the suppression hearing that Cantrell seemed overly nervous and he thought that Cantrell might be intoxicated. Deputy Simmons did not, however, ask Cantrell to take a breathalyzer test or take any other steps to determine if Cantrell was in fact intoxicated. Deputy Simmons then returned to his car and began a computer check on Cantrell's information. He also called Deputy Doug Nally, another member of the Putnam County Sheriff's Department, and requested his assistance. The computer check showed that Cantrell had a valid license but that the registration was for a different car.

Deputy Nally arrived ten minutes into the stop, and Deputy Simmons asked him to complete the paperwork while Deputy Simmons brought Deuce out of the car and walked

him around the Escalade. The dog signaled that there were drugs in the car and Deputy Simmons subsequently conducted a hand search of the vehicle, discovering a plastic bag containing cocaine inside a cigarette pack. Cantrell was then placed under arrest. The entire encounter lasted twenty-six minutes, from the time Deputy Simmons pulled Cantrell over until Cantrell was arrested. The State charged Cantrell with Class C felony possession of cocaine. Cantrell filed a motion to suppress, alleging that the drug evidence was seized without a warrant and in derogation of his constitutional rights. The trial court granted the motion:

In conclusion, the Court finds that the deputy sheriff did not have articulable, reasonable suspicion to call for another officer to write a ticket, which prolonged the stop, which lead to the originating officer having the ability to run the canine around the defendant's car.

Appendix of Appellant at 51. The State dismissed the charge against Cantrell without prejudice, and now appeals the trial court's ruling.

### Discussion and Decision

The State contends that the trial court erred in granting the motion to suppress.

#### I. Standard of Review

On appeal from the grant of a motion to suppress, the State appeals a negative judgment and must show the trial court's ruling on the suppression motion was contrary to law. State v. Cook, 853 N.E.2d 483, 485 (Ind. Ct. App. 2006). This court will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that reached by the trial court. Id. Only the evidence most favorable to the decision will be considered. Id.

## II. The Traffic Stop

A search warrant is a prerequisite to a constitutionally proper search and seizure unless it falls under an exception to the warrant requirement. Navarro v. State, 855 N.E.2d 671, 675 (Ind. Ct. App. 2006). The State bears the burden of proving the exception exists. Id. In Illinois v. Caballes, 543 U.S. 405, 409 (2005), the United States Supreme Court held that the “use of a well-trained narcotics-detection-dog . . . during a lawful traffic stop, generally does not implicate legitimate privacy interests.” The Court also noted that not all dog sniff searches are the same: “a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” Id. at 407. “A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” Id. Our supreme court has followed Caballes in holding that a dog sniff search, if reasonable, does not violate the state or federal constitutions. Myers v. State, 839 N.E.2d 1146, 1149, 1153 (Ind. 2005).

In Wilson v. State, 847 N.E.2d 1064, 1067 (Ind. Ct. App. 2006), this court held that the burden is on the State to prove that the traffic stop was not unreasonably prolonged due to a dog sniff search. In that case, the defendant was stopped sometime before 1:58 a.m. for speeding and having an inoperational license plate light. The officer obtained the defendant’s license and registration and returned to his car to run license and warrant checks and to write warning tickets. The license and warrant checks were returned at 1:58 a.m., showing a misdemeanor drug conviction. The warning tickets were issued at 2:06 a.m. The

officer asked the defendant to step out of his car and asked about weapons or narcotics in the car or on his person. The defendant admitted to carrying a knife. The officer then patted down the defendant and asked if he could search the car. The defendant declined to give permission for a search, and at 2:15 a.m., the officer called for a drug-sniffing dog. The dog alerted to drugs in the car and the defendant was arrested. The trial court denied the defendant's motion to suppress, but on appeal, we reversed. Considering the amount of time that passed between when Wilson was stopped and when the drug-sniffing dog arrived, the fact that the tickets were written well before the dog arrived, and the fact that the officer did not call for a dog until the defendant declined to consent to a search, we held that it was apparent the traffic stop could have been completed before the search began. Id. Because there was no independent reasonable suspicion justifying the dog search, we held that the trial court erred in denying the defendant's motion to suppress. Id. at 1068.

In this case, the trial court granted the motion to suppress upon finding that the traffic stop was prolonged by the dog sniff search. We conclude that the evidence leads to the opposite conclusion. Deputy Simmons was specifically asked at the suppression hearing if the time of the stop was lengthened "in any way, shape or form by . . . running the dog around the car," and he answered, "No." Tr. at 10. The other evidence adduced at the suppression hearing supports Deputy Simmons' testimony, and the State therefore met its burden of proving that the stop was not unreasonably prolonged. Deputy Simmons stopped Cantrell at 12:40 a.m. He spoke with Cantrell, obtained Cantrell's registration and information regarding his license, and returned to his car to begin running a license check

and write tickets for having a false and fictitious registration and having no license in his possession. He also called Deputy Nally for backup. Deputy Simmons returned to Cantrell's vehicle to obtain his insurance information. When Deputy Nally arrived at 12:50 a.m., Deputy Simmons was still in the process of writing the tickets, and he asked Deputy Nally to complete the tickets while he did a sniff search of the car with his dog. Both Deputy Simmons and Deputy Nally testified at the suppression hearing that a typical traffic stop takes ten to fifteen minutes. Cantrell emphasized at the suppression hearing that the entire stop took twenty-six minutes, far exceeding the typical ten to fifteen minute traffic stop. However, the relevant time frame is that between the stop and the dog sniff search. Although the record does not disclose the exact time the dog sniff search was conducted, Deputy Nally arrived ten minutes into the stop, at which time Deputy Simmons turned the tickets over to him for completion and conducted the search. It is likely that the search was conducted within the ten to fifteen minute time frame both deputies described as typical. Unlike the situation in Wilson, conducting the dog sniff search at that time did not unreasonably prolong Cantrell's traffic stop.<sup>1</sup> Once the dog alerted to the presence of contraband in the vehicle, the deputies had probable cause for further investigation. See Myers, 839 N.E.2d at 1150.

### Conclusion

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<sup>1</sup> Because the dog sniff search was conducted while Cantrell was lawfully seized for a traffic violation, reasonable suspicion was not required to support the search. See Myers, 839 N.E.2d at 1149 (citing Caballes, 543 U.S. at 407-08). Thus, the trial court's premise that "the police must have some articulable, reasonable suspicion" for an exterior sweep of a vehicle, app. of appellant at 50, is in error. Only if the stop

The warrantless search of Cantrell's vehicle did not violate his constitutional rights, and his motion to suppress should have been denied. Accordingly, the judgment of the trial court is reversed.

Reversed.

BAKER, J., and DARDEN, J., concur.

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had exceeded a reasonable time would independent reasonable suspicion be required to justify the dog sniff search. See Wilson, 847 N.E.2d at 1068.